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## FISCAL IMPACT REPORT

**LAST UPDATED** 2/14/23

**SPONSOR** Harper/Lente/Cadena/Martínez, J/Maestas **ORIGINAL DATE** 2/9/23

**BILL**

**SHORT TITLE** Change Name of Gross Receipts Tax **NUMBER** House Bill 323

**ANALYST** Graeser

### REVENUE (dollars in thousands)

Estimated Revenue					Recurring or Nonrecurring	Fund Affected
FY23	FY24	FY25	FY26	FY27		
	No fiscal impact	No fiscal impact	No fiscal impact	No fiscal impact	Recurring	General Fund
	No fiscal impact	No fiscal impact	No fiscal impact	No fiscal impact	Recurring	Local Governments

Parenthesis ( ) indicate revenue decreases.

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

Estimated Additional Operating Budget Impact*				Recurring or Nonrecurring	Funds or Agency Affected
FY2023	FY2024	FY2025	3 Year Total Cost		
\$100	\$200	--	\$300	Nonrecurring	TRD – TIPO – Contractual Services
\$45.6	\$91.2	--	\$136.8	Nonrecurring	TRD – TIPO – Staff workload
\$742.9	\$742.9	--	\$1,485.8	Nonrecurring	TRD – ITD – Contractual services
\$144.4	\$144.4	--	\$288.8	Nonrecurring	TRD – ITD – Staff workload
\$140.1	\$140.1	--	\$280.2	Nonrecurring	TRD – ASD – Staff workload
\$160	\$160	--	\$320	Nonrecurring	TRD – RPD – staff workload
\$470	\$490	--	\$960	Nonrecurring	TRD – ACD – staff workload
<b>\$1,803.0</b>	<b>\$1,969.0</b>	--	<b>\$3,772.0</b>	<b>Nonrecurring</b>	<b>TOTAL – TRD</b>
Likely significant administrative impact, but not quantified.					NMFA

Parenthesis ( ) indicate expenditure decreases.

### Sources of Information

LFC Files

#### Responses Received From

Economic Development Department (EDD)  
 Taxation and Revenue Department (TRD)  
 New Mexico Finance Authority (NMFA)  
 New Mexico Municipal League (NMML)

#### No Response Received

Department of Finance/Local Government Division (DFA/LGD)  
 New Mexico Counties

## SUMMARY

### Synopsis of House Bill 323

House Bill 323 changes the name of the gross receipts tax (GRT) to the “sales tax” and changes the compensating tax to the “use tax.” It also changes the names of other taxes, acts, and revenue bonds that included the words “gross receipts tax” or “compensating tax” to instead refer to “sales tax” and “use tax,” respectively.

The bill provides minor technical cleanup and repeals two sections of the law: one to resolve a conflict where two unreconcilable amendments to the same section of law were made in the same session. The one with the earlier effective date is repealed. The second repeal is a typographical error that will be fixed with an amendment.

The effective date of this bill is January 1, 2024.

## FISCAL IMPLICATIONS

These name changes will have no anticipated revenue impacts. All of the operational provisions of the renamed tax acts remain intact. There will likely be unanticipated administrative problems implementing this name change.

EDD notes, “The bill’s changes could lead to substantial costs to the Taxation and Revenue Department and to minor costs for local governments. It is impossible to determine what the return on investment would be for this cost.”

TRD notes there is no direct revenue impact but the bill could possibly have a large impact on local governments.

NMFA comments:

As drafted, HB323 could impact the costs to the NMFA if a determination is made that the bill would require amendments to approximately 200 outstanding loans with a principal amount of approximately \$600 million that are secured with some form of GRT or GGRT pledge.

New Mexico Municipal League comments:

Most municipalities will incur some costs in changing internal documents and taxpayer information material relating to their local gross receipts and compensating taxes. There will also be some cost in training staff about the name change and explaining it to local businesses. These costs are difficult to estimate without further analysis.

## SIGNIFICANT ISSUES

EDD explains the probable reason for the name change proposed in this bill:

A few years ago, the Revenue Stabilization and Tax Policy Committee (RSTP) spent many days discussing issues and concerns with various taxes, focusing primarily on GRT. One of the issues raised was the name of the tax, because New Mexico’s GRT is somewhat unusual in scope and name. Many states have pure sales taxes; a few others have true gross receipts taxes that generally tax all activity at a very low rate.

Our state's GRT is a hybrid of the two and has been described as acting more as a broad-based sales tax on vendors of goods and services (the tax is applied to sellers rather than buyers). This is at odds with what, if anything, many businesses know about gross receipts taxes. Some economic developers, business representatives, and others reported the name places New Mexico at a disadvantage for companies considering locating in the state. As a result, the final RSTP recommendation was to change the names of our GRT and compensating taxes to sales and use taxes, much more in line with naming conventions of other states.

Changing the name from GRT to sales tax does not change the actual structure of the way taxes are imposed and collected, but it makes our tax structure sound more familiar, which could be particularly useful for small businesses and foreign businesses that might not have internal expertise with a pure gross receipts tax or hybrid structure. The current naming of the tax could have a mild suppressive effect on business recruitment because companies are typically looking for reasons to exclude a location from consideration to whittle down the options list. Our tax system's somewhat unique name could be a reason some of these businesses exclude us from their lists before we have a chance to explain how GRT works and pitch to them the benefits of locating in New Mexico. This bill could improve this situation.

TRD expresses concern about the provisions of the bill:

This bill may make New Mexico's tax structure more appealing or less confusing to outside entities that may choose to do business in New Mexico. It is possible that some businesses may be discouraged from developing in New Mexico for fear of the unknown gross receipts tax. Such a consequence is speculative, and TRD cannot estimate the success this bill may have in making New Mexico's perception more business friendly.

Turning our focus to the hundreds of thousands of existing New Mexico GRT taxpayers, the renaming of the gross receipts tax and other taxes without changing the tax structure may confuse and frustrate existing taxpayers. The Taxation and Revenue Department (TRD) will need to address potential taxpayer frustration and confusion with extensive taxpayer outreach and extend greater resources towards its call center and other customer service channels.

Currently, the names of the gross receipts and compensating taxes alert taxpayers that there is something different with New Mexico's tax than the sales tax they may be used to in other states. A pure sales taxes typically focuses the tax on the final consumption of the product or service and implies that the tax is imposed on the purchaser, whereas gross receipts taxes are imposed on the receipts of the seller. (Note that the incidence of compensating taxes, like use taxes, do fall on the purchaser.)

New Mexico's structure has been called a hybrid sales tax by the Tax Foundation. If the names are changed to sales and use tax, but the taxes do not function as a sales or use tax that many taxpayers are familiar with in other states, taxpayers may be confused or frustrated. Calling New Mexico's gross receipts tax a sales tax may mislead that the incidence of the tax is on the consumer, when in reality it will remain on the seller.

Extensive time and resources would be necessary to update the GenTax system, forms, publications, website, and regulations. Implementation of this bill would necessarily divert TRD resources from processing tax returns, refunds, audits, and collections. TRD is concerned the potential benefits of these name changes may not justify the expense and effort required.

The bill does not explicitly say that all current local option gross receipts and compensating tax enactments would be considered local option sales and use taxes under the new regime. Without this it is possible each of these would need to be re-enacted by local governing bodies, potentially requiring electorate approval anew of some increments. Under this scenario, the cumulative effects on counties and municipalities would be large: approximately \$1.6 billion per year of revenue would need to be re-enacted or foregone. TRD recommends that a clause be added under Sections 7-19D and 7-20E NMSA 1978 that states local option gross receipts tax enactments are deemed to be sales tax enactments to streamline that change for local governments.

Gross receipts tax increments are often pledged for repayment of long-term bonds by local public bodies. The New Mexico Finance Authority should be consulted on what steps would be required to prevent impairment of long-term bond covenants. It is certainly possible to work through these naming changes, but doing so may take time and require legal resources.

To ensure that any missed references to gross receipts or compensating taxes are covered, the bill should specify any remaining references now refer to sales and use taxes.

A provision may need to be added to direct that all contracts governed by the laws of the State of New Mexico referencing the gross receipts tax and other taxes are now construed to reference the sales tax. Such a provision may prevent thousands of public and private entities from needing to amend contracts to reflect the name change.

NMFA supports this advice:

Changes in tax law have the potential, even in situations where only the name of the tax is being changed, to legally impair NMFA bonds where the bill is vague regarding whether changes in the names of the various taxes would invalidate currently enacted ordinances and resolutions imposing each tax, respectively. The bill does not appear to contain adequate non-impairment language that has been enacted in other provision of law.

NMFA suggests an amendment to clarify this issue – see “SUGGESTED AMENDMENTS”.

## **PERFORMANCE IMPLICATIONS**

NMFA comments on performance implications:

Many of the outstanding NMFA loans secured by a pledge of GRT or GGRT are legally intercepted each month through written agreements between the NMFA, the New Mexico Taxation and Revenue Department (“TRD”), and each underlying borrower. If NMFA revenues are not intercepted appropriately by TRD due to the intercept

agreements referencing GRT or GGRT as opposed to “sales tax” as proposed in the bill, a large portion of the NMFA’s Public Project Revolving Fund (“PPRF”) would be significantly impacted. Such a situation could raise potential bondholder lawsuits, and could further be considered violations of Article I, Section 10 of the U.S. Constitution or Article II, Section 19 of the New Mexico Constitution, or both.

## ADMINISTRATIVE IMPLICATIONS

The bill has an effective date of January 1, 2024. This date may not provide enough time for all taxing agencies and local government to make the appropriate updates. TRD contends a January 1, 2025, effective is more feasible.

The impact on the administration of the tax system is extraordinary. Thousands of rules and forms would have to be updated; computer systems would have to be reworked. From TRD:

TRD’s Tax Information and Policy Office (TIPO) would be highly impacted by the changes proposed in this bill. Roughly 95 percent of TRD’s forms, instructions and publications would need to be updated by an office of 5 full-time equivalent (FTE) staff. TIPO publishes hundreds of informational documents in hard copy and online, and there are dozens of tax forms that would need to be redrafted, which are also published in hard copy and electronically. Contractual resources would be needed for the entire period leading up to the effective date to accomplish these extensive changes.

TIPO is also responsible for regulation changes, and all regulations under the Gross Receipts and Compensating Tax Act would need to be amended, along with some regulations promulgated under other acts that reference these taxes. Changes to any rules have required publication and a public hearing must be held. The cost and time needed to promulgate these rule changes would be cost intensive and the time needed to accomplish this would take over a year’s time of multiple employees. The suggestion above in Technical Issues would mitigate this one issue, but only with respect to regulations.

There is no simple fix to the need to update the publications and forms, each of which would need to be manually reviewed and updated by TIPO. TRD’s website would also require extensive changes to correct terms. TIPO would need either additional resources or at least two (2) additional FTEs to complete the changes by the proposed effective date, and even those resources would be insufficient if the suggestion in Technical Issues is not adopted.

Implementing the bill would have a high impact on the Information Technology Division (ITD) of TRD. ITD will incur a total of \$1,774,531 of which \$1,485,723 will be contractual costs and \$288,808 in staff workload costs. The time to implement will be at least 15 months, and potentially longer if contractual resources are insufficient. ITD will need to review and update every process in the GenTax system that refers to the Gross Receipts Tax and Compensating tax. This involves everything from taxpayer registration, automated letters to taxpayers, internal interface references, to final distributions and reports.

The Administrative Services Division (ASD) of TRD will require implementations associated with GenTax revenue distribution and reporting changes and perform final testing. ASD estimates implementation of the legislation will take approximately 600

staff workload hours from 4 full-time equivalent (FTE) staff at a cost of \$280 thousand.

The Revenue Processing Division (RPD) of TRD will be require staff commitments to review and test the implementation of the changes including to forms, publications and system changes. As staff is assigned to work on the project, RPD will need to decrease its vacancy rate by 2 percent to assign resources to attend to return and refund inventories.

Extensive taxpayer outreach will need to be planned with the implementation of this bill which includes staff training and preparing targeted communications. TRD will also need to extend greater resources towards customer service to taxpayers as the call center, taxpayer advocate, and local governmental liaison will see an increase of taxpayer's inquiries.

The Audit and Compliance Division(ACD) of TRD will be require staff commitments to review and test the implementation of the changes including to forms, publications and system changes. As staff is assigned to work on the project, ACD will need to decrease its vacancy rate by .2 percent, equivalent to 7 FTE at a cost of \$470 thousand to assign resources to attend to outreach and communication.

NMFA also anticipates major administrative difficulties:

As drafted, it is unclear whether amendments to approximately 200 outstanding loans with a principal amount of approximately \$600 million that are secured with some form of GRT or GGRT pledge would be required because the bill is vague regarding whether changes in the names of the various taxes would invalidate currently enacted ordinances and resolutions imposing each tax, respectively. If amendments are required, NMFA would incur substantial costs to make conforming amendments for hundreds of loans, not to mention working closely with TRD to match intercept agreements to the appropriate imposition of tax.

Should the bill remain vague, as described above, NMFA has concerns about the potential impact to TRD and how timely amendments could be completed, thus posing a risk to the NMFA's ability to legally intercept revenues pledged to its loans.

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

In a bill of 665 pages and 336 sections, there will undoubtedly be conflicts with other bills. However, identifying the conflicts by statutory section must be done electronically by the Legislative Council Service in the mid-session and session final conflicts document.

## **TECHNICAL ISSUES**

TRD notes several important issues relative to implementation of the provisions of this bill:

TRD recommends any bill contain temporary provisions that allow for a smooth implementation throughout the transition. For example, if this bill is enacted, TRD will need to revise an extensive volume of rules, forms, publications and its GenTax system. A temporary provision could provide security in interpretation in the event any revision was not complete by the bill's effective date.

TRD also suggests that a temporary provision be placed on this bill to not conflict with bills passed during the current legislative session that touch gross receipts tax

and compensating tax.

Rather than requiring TRD to go through the entire rulemaking process necessary to change all of these regulations, it is recommended that the bill be amended to include a provision that the Administrative Law Division of State Records and Archives replace every instance where the names of these taxes appear in regulation. This would not make any substantive change to the regulations, but would align them with statute without going through the entire public hearing and comment process normally required for regulation changes. Given the number of regulations that would be affected by the change, the cost of making these regulatory changes, in the absence of the suggested amendment above, would be prohibitively expensive in time and money.

EDD notes: “It may be necessary for the bill to add a temporary provision section that will ensure all public and private contracts do not need to be amended to comply with the new changes.”

The repeal of Laws 2019, Chapter 10, Section 1, is a typographical error. The reference should be Laws 2019, Chapter **210**, Section 1. This resolves the problem of multiple amendments to 4-62-1 NMSA 1978. This error will be corrected by amendment.

The repeal of Laws 2021, Chapter 65, Section 1.3, resolves a conflict where two amendments of the same section of law enacted in the same session cannot be reconciled or construed together. This section added some anti-pyramiding provisions to the GRT. Laws 2021, Chapter 65, Section 13, effective July 1, 2021, and Laws 2021, Chapter 66, Section 2, effective January 1, 2022, enacted different amendments to this section that cannot be reconciled. The provisions of Laws 2021, Chapter 66, Section 2, effective January 1, 2022, are set out above.

NMML notes another technical issue:

“In 2019’s HB 396, , the comparable Gross Receipts name change bill, the FIR noted that the Taxation and Revenue Department had raised a technical concern that: ‘the bill does not explicitly say that all current local option gross receipts enactments would be considered local option sales taxes under the new regime. Without this, it is possible each of these would need to be re-enacted by local governing bodies.’”

“This issue has not been addressed in HB 323. This issue should be clarified, and the Municipal League opposes any need for local officials to have to reimpose their tax increments.”

## **OTHER SIGNIFICANT ISSUES**

TRD notes: “[O]ther state government departments, local governments, business associations, and chambers of commerce who produce publications and provide information on their websites on New Mexico state and local gross receipts and compensating taxes will want to update these publications so as to alleviate confusion to new businesses and current residents and taxpayers.”

## **SUGGESTED AMENDMENTS**

NMFA proposes the following amendments to HB 323:

TEMPORARY PROVISION—PLEDGES OF GROSS RECEIPTS TAX, COUNTY GROSS RECEIPTS TAX OR MUNICIPAL GROSS RECEIPTS TAX REMAIN IN EFFECT. Any revenue bond that may be secured by a pledge of gross receipts tax or county gross receipts tax or municipal gross receipts is deemed to be secured by a pledge in an equal amount of sales tax or county sales tax or municipal sales tax, as appropriate, as was authorized pursuant to an ordinance or resolution when the resolution or ordinance was adopted unless such outstanding revenue bonds have been discharged in full or provision has been fully made therefor.

Any dedication of revenue pursuant to an ordinance or resolution remains in effect until changed by the governing body; provided that, if the dedication were approved by the electorate, any change to the dedication must also be approved by the electorate.

Although not suggesting amendatory language, NMML urges an amendment to address the issue identified in TECHNICAL ISSUES.

LG/al/ne/hg